

Part III

Administration, Procedural, and Miscellaneous

Notice 2003-13

This notice provides a proposed revenue procedure that would establish a procedure for a payment card organization to request a determination that it is a Qualified Payment Card Agent (QPCA) for purposes of §§ 3406 and 6724 of the Internal Revenue Code. A QPCA could act on behalf of cardholder/payors in soliciting, collecting, and validating merchants' names, Taxpayer Identification Numbers (TINs) and corporate status and on behalf of merchant/payees in furnishing such information to cardholder/payors. The proposed revenue procedure describes the application procedures for a payment card organization to request a QPCA determination, the requirements that a payment card organization must meet, including the TIN solicitation activities that a payment card organization must undertake, to obtain a QPCA determination and avoid revocation of the determination.

The IRS requests comments on this proposed revenue procedure. Written comments must be received by May 5, 2003. Comments should be submitted to: CC:PA:RU (NOT-122617-02), Room 5526, Internal Revenue Service, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand delivered between the hours of 8:00 AM and 5:00 PM to CC:PA:RU (NOT-122617-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2003-13" in the subject line of any electronic communications.

For further information regarding this Notice, contact Donna Welch of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. Ms. Welch may be contacted at 202-622-4910 (not a toll-free call).

APPENDIX

(PROPOSED REVENUE PROCEDURE)

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for a payment card organization to request a determination that it is a Qualified Payment Card Agent (QPCA) for purposes of §§3406 and 6724 of the Internal Revenue Code. A QPCA may act on behalf of cardholder/payors in soliciting, collecting, and validating merchants' names, TINs and corporate status and on behalf of merchant/payees in furnishing such information to cardholder/payors. Proposed Procedure and Administration Regulations

would relieve cardholder/payors from certain TIN solicitation requirements for payments made through a QPCA. Proposed Employment Tax Regulations would also provide an exemption from the backup withholding requirements for payments made to certain merchant/payees through a QPCA.

SECTION 2. BACKGROUND

.01 Payment card transactions. A payment card transaction is a transaction in which a cardholder/payor uses a payment card (as defined in section 4.03 of this revenue procedure) to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. A payment card organization (as defined in section 4.04 of this revenue procedure) sets the standards and provides the mechanism, either directly or indirectly through members and affiliates, for effecting the payment.

.02 Reporting requirements. In general, § 6041 requires a person engaged in a trade or business and making a payment in the course of the trade or business of \$600 or more during a calendar year of fixed or determinable income to file an information return with the IRS and to furnish an information statement to the payee. Section 1.6041-3(q) of the Income Tax Regulations provides exceptions to these requirements, including, for example, exceptions for payments made to a payee that is a corporation.

Section 6109(a)(2) provides that any payee, with respect to whom a return is required to be made by another person or whose identifying number is required to be shown on a return of another person, must furnish to the other person the identifying number prescribed for securing the proper identification of the payee. Section 6109(a)(3) provides that any person required to make a return with respect to a payee must ask the payee for the identifying number prescribed for securing the proper identification of the payee and must include that number in the return.

.03 Backup withholding. Section 3406(a)(1) requires a payor to withhold on reportable payments (as defined in § 3406(b)(1)) if the payee does not provide a TIN to the payor in the manner required or if the Secretary notifies the payor that the TIN furnished by the payee is incorrect or in certain other circumstances. Section 3406(i) provides that the Secretary shall prescribe the regulations necessary or appropriate to carry out the purposes of § 3406.

Section 31.3406(j)-1 of the Employment Tax Regulations provides that the Commissioner has the authority to establish TIN matching programs through revenue procedures or other appropriate guidance. Under the regulations, a payor participating in a TIN matching program may contact the IRS with respect to the TIN furnished by a payee before filing information returns with respect to reportable payments to the payee. The regulations further provide that the IRS will inform the payor whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained for the TIN matching program. Section 31.3406(j)-1T of the temporary Employment Tax Regulations provides that an authorized agent, including a QPCA,

designated by a payor to participate in TIN matching on the payor's behalf is also permitted to participate in TIN matching. Revenue Procedure 2003-9 issued pursuant to the authority in § 31.3406(j)-1 permits all payors (and authorized agents described in § 31.3406(j)-1T) to participate in TIN matching.

Section 31.3406(g)-1(f) of the proposed Employment Tax Regulations would provide that the backup withholding requirements of section 3406 do not apply to payments made through a QPCA if the payments are made to a qualified payee (as defined in proposed § 31.3406(g)-1(f)(2)(v)) or during a grace period for determining whether the payee is a qualified payee. Section 31.3406(g)-1(f)(3) of the proposed regulations would require a QPCA to notify the cardholder/payor when payments are made to a merchant/payee who is not a qualified payee.

.04 Information reporting penalties and waivers for reasonable cause. Section 6721 provides that a payor may be subject to a penalty for failure to file a complete and correct information return. Section 6722 provides that a payor may be subject to a penalty for failure to furnish a complete and correct information statement to a payee. A failure subject to the §§ 6721 and 6722 penalties includes a failure to include correct payee TINs.

Section 6724 provides that the penalties under §§ 6721 and 6722 may be waived if the filer shows that the failure was due to reasonable cause and was not due to willful neglect. Section 301.6724-1(e)(1)(vi)(H) and (f)(5)(vii) of the proposed Procedure and Administration Regulations would provide that a cardholder/payor in a payment card transaction may establish reasonable cause based on its reliance on a QPCA.

SECTION 3. SCOPE

This revenue procedure applies to payment card organizations seeking to act on behalf of cardholder/payors in soliciting, collecting, and validating merchants' names, TINs and corporate status and on behalf of merchant/payees in furnishing such information to cardholder/payors.

SECTION 4. DEFINITIONS

For purposes of this revenue procedure, the following definitions apply:

.01 Cardholder. A cardholder is the payor for payments made to a merchant/payee through a payment card.

.02 Merchant. A merchant is a payee that has entered into an agreement with a payment card organization, or a member or affiliate, to accept the organization's payment card as payment for goods and services.

.03 Payment card. A payment card is a card (or an account) issued by a payment card organization, or one of its members or affiliates, to a cardholder/payor

which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

.04 Payment card organization. A payment card organization is an entity that sets the standards and provides the mechanism, either directly or indirectly through members and affiliates, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization generally provides such a payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards.

.05 Qualified Payment Card Agent (QPCA). A QPCA is a payment card organization that has a current QPCA determination from the IRS. A person acting in its capacity as a QPCA does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

SECTION 5. APPLICATION AND REQUIREMENTS FOR QPCA DETERMINATION

.01 Where to apply for QPCA determination. A person authorized to act on behalf of a payment card organization may submit a written request for a QPCA determination to the following address:

Internal Revenue Service – Martinsburg Computing Center
250 Murall Drive, Mail Stop 360
ATTN: TIN Matching Coordinator
Kearneysville, WV 25430

.02 Content of QPCA application. A payment card organization requesting a QPCA determination must include the following in its application:

- (1) The name, address, and employer identification number of the payment card organization and a description of its business.
- (2) The name of the department or office of the payment card organization that will serve as the information contact.
- (3) The name of the department or the names and titles of the officers or employees that will be responsible for the performance of the TIN solicitation activities described in section 6.
- (4) A list of the systems, business lines, or card products that will be covered by the TIN solicitation activities described in section 6.
- (5) An explanation of the account opening procedures and documents the payment card organization uses, or requires its members or affiliates to use, to establish merchant account relationships.

- (6) The approximate number and the type of merchants (individuals, corporations, etc.) enrolled by the payment card organization.
- (7) An explanation of the payment card organization's systems and controls for--
 - (a) Obtaining merchant/payee data either directly or indirectly through its members or affiliates or from other sources;
 - (b) Validating the accuracy of the merchant/payee data;
 - (c) Ensuring the accuracy and reliability of the merchant/payee data;
 - (d) Maintaining the merchant/payee data; and
 - (e) Supplying the merchant/payee data to the cardholder/payor.

.03 Requirements for QPCA determination. A payment card organization must meet the following requirements to obtain a QPCA determination:

(1) Express authorization to act on behalf of cardholder/payors and on behalf of merchant/payees. The payment card organization must establish that cardholder/payors have expressly authorized it, or its members or affiliates, to act on their behalf in soliciting, collecting, and validating merchants' names and TINs and to assist the cardholders in meeting their information reporting obligations under §§ 6041 and 6041A. The payment card organization must also establish that merchant/payees have expressly authorized it, or its members or affiliates, to act on their behalf in furnishing their names and TINs to cardholders and to assist the merchants in meeting their obligations under § 6109(a)(2).

(2) TIN solicitation activities. The payment card organization must establish that it has, or demonstrate that it will, undertake the TIN solicitation activities described in section 6.

(3) Reliability of merchant/payee data. After obtaining the authorizations required by section 5.03(1), the payment card organization must participate in the IRS TIN Matching Program and must demonstrate, based on the TIN matching results, that its merchant/payee data is sufficiently reliable.

SECTION 6. TIN SOLICITATION ACTIVITIES

.01 Notification and disclosure requirements. A QPCA must notify the merchant/payees for which it acts as agent that it will obtain the merchant/payees' TINs and corporate status and will provide this information to cardholder/payors to assist cardholders in meeting their information reporting obligations.

A QPCA must notify the cardholder/payors for which it acts as agent that any merchant/payees' names, TINs, and corporate status that the QPCA may furnish may be used by the cardholder solely for purposes of meeting its information reporting obligations.

A QPCA must disclose its status as a QPCA, and any change in that status, to any member or affiliate that issues payment cards, as well as to the merchant/payees and cardholder/payors for which it acts as agent.

.02 TIN Matching participation. A QPCA must participate in the IRS TIN Matching Program and must match its merchant/payee data relating to reportable payments with IRS data at least annually. The QPCA must transmit only merchant/payee data that has not previously been validated through IRS TIN Matching.

The QPCA must notify the merchant/payees for which it acts as agent that it will participate in the IRS TIN Matching Program and that, if the merchant/payee provides a TIN to the payment card organization, the TIN may be matched against IRS data.

.03 Providing merchant/payee data to cardholders. The QPCA must provide cardholder/payors with merchant/payee data on or before December 31 of the year in which the transaction occurs, or on or before 30 days after the transaction, whichever is later. The QPCA must provide cardholder/payors with the results of its TIN matching participation within 30 days after the payment card organization receives the results.

SECTION 7. OTHER REQUIREMENTS

.01 Availability of records. A payment card organization must respond to any reasonable IRS request for inspection of any books and records that relate to the operation of TIN solicitation activity, including, but not limited to, reports, memoranda, budgets, and computer printouts. The payment card organization must allow the IRS reasonable access to the merchant/payee TIN data system, including instruction manuals describing the system.

.02 Change in information. The QPCA must promptly notify the IRS of any change in the information described in section 5.

.03 Confidentiality of information. The payment card organization must maintain the confidentiality of information obtained through its TIN solicitation activities in accordance with the requirements of § 31.3406(f)-1 of the Employment Tax Regulations. Except as permitted under § 31.3406(f)-1, the payment card organization may not disclose any merchant/payee information to any person other than the cardholder/payor without prior written consent of the merchant/payee. The IRS will treat all information provided by a QPCA as confidential taxpayer return information under § 6103.

SECTION 8. TERM, RENEWALS, AND TERMINATION

.01 Term and renewal. In general, a QPCA determination will be effective for three years from the date of the determination. A QPCA may request a renewal of the QPCA determination by submitting an application for renewal to the IRS no earlier than six months and no later than three months before the expiration of the three-year term.

In the application for renewal, the QPCA must report any change in the information in the original application. Before renewal of the determination, the IRS may review the QPCA's systems. In addition, the QPCA must demonstrate that the merchant/payee data continues to be reliable. The application for renewal must include the results from participation in the IRS TIN Matching Program during the current three-year term. The IRS will make every effort to issue a decision on a renewal application at least 30 days before the expiration of the current three-year term. In the event that the IRS does not issue a decision on a timely renewal application before the expiration of the existing QPCA determination, the determination will remain in effect until the IRS issues a decision on the renewal application.

.02 Revocation of determination. The IRS may revoke a QPCA determination before the expiration of its three-year term if the IRS determines, based on the results of the QPCA's participation in the IRS TIN Matching Program, that the merchant/payee data is not reliable or if the payment card organization fails to meet any of the requirements in section 5, 6, or 7.

SECTION 9. EFFECTIVE DATE

The procedures are proposed to be effective on the date they are published as a final revenue procedure.